

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1916.

No. 3028.

390

No. 18, SPECIAL CALENDAR.

C. B. HIGHT, APPELLANT,

vs.

RICHMOND PARK IMPROVEMENT COMPANY, INCORPORATED.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 18, 1916.

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Court of Appeals of the District of Columbia.

No. 3028.

C. B. HIGHT, Appellant,
vs.

RICHMOND PARK IMPROVEMENT COMPANY, INCORPORATED.

a Supreme Court of the District of Columbia.

In Equity. No. 34297.

RICHMOND PARK IMPROVEMENT COMPANY, INCORPORATED, Plaintiff,
vs.

C. B. HIGHT, CHARLES A. VALENTINE, G. PITTS RALEIGH, and
Charles H. Buck, Trustees; Harry E. Karr, Maryland Title Com-
pany, a Corporation; The New Amsterdam Casualty Company, a
Corporation; James E. Edmunds and S. V. Kemp, Trustees, De-
fendants.

Be it remembered, That in the Supreme Court of the District of
Columbia, at the City of Washington, in said District, at the times
hereinafter mentioned, the following papers were filed and proceed-
ings had, in the above-entitled cause, to wit:

1

Bill.

Filed April 28, 1916.

In the Supreme Court of the District of Columbia, Holding an Equity
Court.

Equity. No. 34297.

RICHMOND PARK IMPROVEMENT COMPANY, INCORPORATED, Plaintiff,
vs.

(1) C. B. HIGHT, (2) CHARLES A. VALENTINE, (3) G. PITTS
Raleigh, and (4) Charles H. Buck, Trustees; (5) Harry E. Karr,
(6) Maryland Title Company, a Corporation; (7) The New Am-
sterdam Casualty Company, a Corporation; (8) James E. Ed-
munds and (9) S. V. Kemp, Trustees, Defendants.

To the Supreme Court of the District of Columbia:

Plaintiff, Richmond Park Improvement Company, Incorporated,
states as follows:

1. That the plaintiff is a corporation duly incorporated under and

existing by virtue of the laws of the State of Virginia, and brings this suit in its own right.

2. That the defendants, C. B. Hight and Charles A. Valentine are citizens of the United States and residents of the District of Columbia and are sued in their own right; that the defendants G. Pitts Raleigh and Charles Buck, trustees, are citizens of the United States, and residents of the State of Maryland, and are sued in their capacity as trustees under a certain deed of trust as hereinafter set forth; that the defendant Harry W. Karr is a citizen of the United States and a resident of the State of Maryland, and is sued in his own right; that the defendant, Maryland Title Company is a corporation, and plaintiff

2 tiff avers upon information and belief that it is incorporated under the laws of the State of Maryland, and is sued in its own right, as hereinafter set forth; that the defendant, The New Amsterdam Casualty Company is a corporation, doing business in, and having an agent and place of business in the District of Columbia, and plaintiff avers upon information and belief that it is incorporated under the laws of the State of Maryland, and is sued in its own right, as hereinafter set forth; that the defendants, James E. Edmunds and S. V. Kemp, trustees, are citizens of the United States and residents of the State of Virginia, and are sued in their capacity as trustees under a certain deed of trust as hereinafter set forth.

3. That heretofore, to wit, during the month of November, 1915, and for a long time, that is twelve months, prior thereto, plaintiff owned in fee simple, amongst other real estate within the District of Columbia, twelve lots, being lots numbered 69 to 80, inclusive, in square 2063, of Richmond Park, in the sub-division by the Richmond Park Improvement Company, Inc., of lots numbered 45 to 62, inclusive, in said square, as per plat recorded in the Office of the Surveyor for the District of Columbia, in liber 53 at folio 169. The aforesaid real estate was and is adjacent and near to other real estate owned and still owned by plaintiff in the District of Columbia, all of which, or practically all of which, was and is well located for residential purposes near the City of Washington, District of Columbia, adjoining Cleveland park, and about two miles nearer the centre of the said City than Chevy Chase, a high-class suburban residential section of the District of Columbia, in the same general direction from said City and is part of the subdivision known as Richmond

3 Park; that the said real estate so owned by plaintiff had at said time been subdivided into blocks and lots with streets laid off and constructed through the same for the purpose of selling said lots—many hundred in number—for high-class residential purposes, pursuant to a general scheme for the upbuilding of the subdivision of none but high-class residences, and by reason of the location of these lots and their being in a section near or contiguous to other high-class residential properties, it was and now is of first importance that any and all residences that might then, or may now be constructed, on plaintiff's said properties, should be of a value and type that would appeal to well-to-do and prosperous people, and that such dwellings should cost at least \$5,000 each; and be of a class

which including the lot sell for about \$9,000 each; that the effect of placing cheaper buildings on said lots, and especially on the lots hereinafter mentioned as conveyed to the defendant, Charles A. Valentine, of a less cost than \$5,000 each, would result in a lowering of the marketability and value of said lots and the other lots owned by the plaintiff in said section and subdivision, and the consequent cheapening of all plaintiff's said properties, and would destroy the general scheme for the upbuilding of the entire subdivision. Of all these things the said defendants, C. B. Hight and Charles A. Valentine had knowledge throughout October, 1915, and all times since hitherto.

4. That, in order to secure the construction of twelve desirable detached residences costing not less than \$5,000 each on twelve of the lots owned by plaintiff, being part of said subdivision, that is to say, one dwelling on each of lots numbered 69 to 80, both inclusive, in square 2063 aforesaid, plaintiff entered into a certain option contract bearing date, to wit, October 13, 1915, with the said defendant,

C. B. Hight, a copy of which marked "Plaintiff's Exhibit A,"
4 is herewith filed and prayed to be read and treated as a part hereof. The said contract covers what were formerly lots 45 to 62 (both inclusive) in said square. In and by said contracts these lots were to be re-subdivided into twelve lots and that was subsequently done. By such re-subdivision the lots are designated and known as lots 69 to 80, both inclusive. By said contract it was, amongst other things, provided that said lots should be delivered by plaintiff to the said defendant Hight, or his assigns, free of incumbrances, and that he should have the right to place on each lot a building loan to be secured by a first deed of trust on said lot in an amount not to exceed four-fifths of the cost of the contemplated improvement thereon; that said lots should be paid for by said Hight at thirty-five cents per square foot, in promissory notes of a so-called "straw man," and said notes to be secured by second deeds of trust on said lots subsequent only to said proposed building loans.

It was further contemplated and agreed between your plaintiff and the said Hight that after the dwellings should be erected on said lots, said lots and houses should be sold, and that said Hight should receive from the cash payment on each house and lot the sum of \$1,000, which amount he would have theretofore put in each of said properties over and above the \$4,000 building loan to make up the \$5,000 minimum cost of each house, and also certain notes of the purchaser as more fully and at large appears in said contract, to which reference is again hereby made.

5. Plaintiff further shows to the Court that the said defendant C. B. Hight exercised the option given under said contract and
5 formally accepted the same, and announced his intention of constructing upon said lots houses which were to cost, when completed, \$5,000 or more; that he subsequently furnished plaintiff with blue prints and specifications of proposed detached dwellings to be constructed on said lots and stated and represented to plaintiff its representatives and officers, that the cost of each dwelling described by said blue prints and specifications would be over \$5,000,

and that the building loan which he promised to place as a first trust upon each lot, or cause to be placed thereupon, would be \$4,000 so as not to exceed four-fifths of the cost of the proposed improvements, in accordance with his contract with plaintiff. On November 8, 1915, said defendant C. B. Hight wrote plaintiff a letter, copy of which is hereto annexed, marked "Plaintiff's Exhibit B" which is prayed to be taken and read as a part hereof, in which he specifically states:

"The cost of improvements as contemplated and covered by blue print and specifications will be over Five thousand (\$5,000) Dollars per house."

6. Plaintiff further shows to the Court that it had no knowledge as to what the dwellings described in the said blue prints and specifications so furnished by said defendant C. B. Hight would cost, but relied upon said defendant Hight's continued statements and representations, and his contract and letters, that each dwelling would cost not less than \$5,000, in order that plaintiff would be protected in its second trust for said purchase price of said lots, and has security therefor.

7. Plaintiff further shows to the Court that said defendant C. B. Hight designated the defendant Charles A. Valentine as the "straw man" to whom plaintiff should convey the said twelve lots, and advised plaintiff that this said "straw man" should execute his notes payable to the order of the plaintiff for the purchase price of the said lots at the rate of thirty-five cents per square foot, which said notes were to be secured by the said second deed of trust to be a lien upon the said property, second only to the proposed buildings loans of \$4,000 so as not to exceed four-fifths of the cost of proposed improvements. The said defendant C. B. Hight exhibited to plaintiff the proposed deed of trust to be executed by said defendant Valentine for the amount of the proposed building loan prior to the time plaintiff conveyed said twelve lots to said Valentine. In order that plaintiff might be assured that the proposed dwelling on each of said lots would cost not less than \$5,000, so that plaintiff would have security for the said purchase price, plaintiff, before the delivery of its deed conveying said twelve lots to said defendant Valentine as designated by said defendant Hight, did, on or about November 15, 1915, demand that said defendant Hight should, as a part of his contract with plaintiff, expressly and specifically state and agree in writing that each dwelling to be erected on each of said lots would cost not less than \$5,000 and that said defendant C. B. Hight on said last mentioned date wrote plaintiff as follows:

"At the suggestion of your attorney, Mr. Kemp, I beg herewith to advise you that as a part of my contract with you, I will build or have built on the twelve lots numbered 69 to 80 in square 2063 twelve detached dwellings after plans and specifications already submitted and approved by you, namely, four each of the three types A, B and C, and to cost not less than \$5,000 each."

A copy of said letter marked "Plaintiff's Exhibit C" together with a copy of plaintiff's reply thereto, by S. G. Hamner, its President, under date of November 19, 1915, marked "Plaintiff's Exhibit D" are herewith filed and prayed to be read and treated as parts hereof.

8. That, relying and depending upon said defendant C. B. Hight's continued representations, assurances, letters, and contract in the premises, plaintiff thereupon delivered to said defendant Hight its deed to the said twelve lots, conveying the same, free of incumbrance, to the said "Straw man," Charles A. Valentine, the said deed being dated November 10, 1915, and recorded November 18, 1915, at liber 3849, folio 48 et seq. of the Land records of the District of Columbia. And plaintiff prays that the same may be taken and read as a part of this bill.

9. That, at or about the same time, and as a part of the transaction between Hight and his "straw man" Valentine, said defendant Charles A. Valentine and his wife, Carrie E. Valentine, executed a deed of trust on the said lots, conveying the same to the defendants G. Pitts Raleigh and Charles H. Buck, trustees, the said deed of trust reciting that the conveyance was to secure the defendant Harry E. Karr for an indebtedness of \$48,000 owing him by the defendant Charles A. Valentine, represented by said Valentine's certain twelve notes each in the sum of \$4,000, as more fully described in the said deed of trust, one of each of said notes being secured on each of said lots. The said deed of trust was dated November 16, 1915, and was recorded November 18, 1915, at liber 3849, folio 50, et seq. of the Land Records of the District of Columbia, and is prayed to be taken and read as a part of this bill. And plaintiff avers that the said indebtedness of \$48,000 described in the said deed of trust was the said proposed building loans of \$4,000 each, which the defendant Hight had secured for the erection of the said houses upon the said lots, as herein set out.

10. Plaintiff further shows to the Court that at the same time, and as a part of the same transaction, the said defendant, Charles A. Valentine, and his wife, Carrie E. Valentine executed a second deed of trust upon said lots, conveying the same to the defendants J. E. Edmunds and S. D. Kemp, Trustees, to secure the plaintiff for an indebtedness due and owing from the defendant Charles A. Valentine to plaintiff, in the sum of \$20,842.00, represented by twelve notes of the said defendant, Charles A. Valentine, payable to the order of the plaintiff and more fully described in the said deed of trust, these notes being for the purchase price of the said property, which the defendant, C. B. Hight, had agreed to pay the plaintiff, the said deed of trust being dated November 16, 1915, and recorded November 18, 1915, at liber 3849, folio 54 et seq. of the Land Records of the District of Columbia. And plaintiff prays that the same may be taken and read as a part of this bill.

11. Thereupon, at the said time, and as a part of the same transaction between said Hight and said "straw man" Valentine, by deed dated November 16, 1915, and recorded November 18, 1915, at liber 3849, folio 59 et seq. of the Land Records of the District of Columbia, the defendant Charles A. Valentine, and Carrie E. Valentine, his wife, conveyed the said lots to the defendant, C. B. Hight.

12. Plaintiff further shows to the Court that subsequent to the recording of the said several conveyances mentioned in paragraphs 8-11 of this bill, the defendant Hight commenced the construction

and erection of dwelling- on said twelve lots, some of which are near-
ing completion. Plaintiff about March 1916, learned for the
9 first time that the said dwellings which were being erected
were of such construction that when completed they would
cost far less than five thousand dollars each, and that it would have
practically no security for the purchase price of the said lots, repre-
sented by the said notes described in said deed of trust to defendants
James E. Edmunds and S. V. Kemp, by reason of the inferiority of
the houses being placed upon the said lots, the cost of said houses
being much less than the first trust building loan of \$4,000 each
thereon.

As soon as information of this character was received by plaintiff
it caused an examination and investigation to be made as to the cost
of the said houses by competent persons, and plaintiff has been ad-
vised and informed by such persons that each of said houses when
completed will cost far less than \$5,000, that no one of said houses
when complete- will cost as much as \$4,000, but they will each cost
about \$3,550, and that it will have practically no security, if any at
all, for the purchase price of the land upon which the said houses
are being erected, this being the indebtedness represented by the said
notes secured by the said second deed of trust. Plaintiff avers that
such information is true, and that said houses completed will have
cost only, to wit, \$3,550.

13. Plaintiff further avers that said defendant, C. B. Hight, at
the time he entered into said contract marked "Plaintiff's Exhibit A"
and at the time he wrote the said letters marked "Plaintiff's Ex-
hibits B and C," and at all times since, had no intention whatever to
build on the said premises houses of the value of \$5,000, but that
while he was making such promises and assurances to plaintiff with-

10 out incurring any personal liability himself on the notes, and
acting through his "straw man" the defendant, Charles A.

Valentine, the said defendant Hight at all times intended
only to build cheap houses upon said lots, at a cost of less than
\$4,000, which he arranged to borrow as a building loan security by
the first deed of trust, and that it was the intention of the said de-
fendant Hight at all said times, after erecting such cheap houses, at
a cost of less than \$4,000 each, to appropriate to himself and his own
use the difference between the actual cost of the said cheap dwellings
and the \$4,000 building loan on each of said houses. To that end,
the said defendant Hight, acting through the said defendant Charles
A. Valentine, secured the said loan of \$4,000 on each of said lots for
a period of only one year, the said defendant C. B. Hight being an
experienced builder of houses and well knowing that said houses
would cost less than \$4,000 each, and that it would take at least six
months to complete the said houses. And plaintiff avers upon infor-
mation and belief that it was the intention of the said defendant C.
B. Hight and the said Charles A. Valentine to permit the said houses
to be foreclosed under the said deed of trust at the expiration of the
said one year thereby leaving the plaintiff without any security for
the purchase price of the said property.

14. Petitioner further shows to the Court that the said defendant

Hight by his aforesaid actions in erecting and constructing on said lots dwellings at a cost of \$3,550, is knowingly committing, and has committed a fraud, upon plaintiff; that the said defendant Hight has for years prior to the time of the occurrence of these grievances been

11 engaged in and doing the business of erecting and constructing dwelling houses within the District of Columbia; that he knew at the time of submitting the aforesaid blue prints and specifications of the aforesaid proposed dwellings and especially at the time of his making the representations, promises, and agreements as above stated, that the houses he proposed to build, or then had under construction according to said blue prints and specifications, would cost considerably "less than \$5,000 each," and would not cost "over \$5,000 per house" to build, and that his said promises and statements had induced, and did induce, plaintiff to enter into said contract and to take a second trust on said property for the purchase price thereof, and that said defendant Hight well knew that the said statements were false; that he knew that when the said houses were completed they would cost only about \$3,550 per house; that he had knowledge of all these facts at the time of fraudulently procuring the delivery of said deed from plaintiff for the said lots, as stated in paragraph 8 of this bill, under the circumstances aforesaid, and has had such knowledge at all times since hitherto; that his aforesaid act and doings were for the deliberate purpose of and have resulted in the commission of a fraud on plaintiff; that he has already received part of the benefits of, and profited by, his aforesaid fraud; that he has received, on account of the said building loans represented by said trust made in the name of said defendant Valentine, in some instances more than the actual cost of the said houses, and if he be permitted to continue in the perpetration of his aforesaid fraud, he would continue to collect and receive and hold for himself approximately \$450 of said \$4,000 building loan upon each of the said dwellings; that, in consequence thereof, plaintiff's said lots conveyed as aforesaid to said defendant Valentine, will have

12 improvements thereon of the value of not more than \$3,550, and will be subject to the first trust described in paragraph 9 of this bill of \$4,000 on each of said lots, and plaintiff would have no security whatever for the purchase price of the said lots, but will have only the notes of the said "straw man," the defendant Charles A. Valentine, representing the said purchase price due plaintiff for said lots, and the said second trust will be no or practically no security whatever. Plaintiff further says that the lots themselves which were conveyed by plaintiff to the said defendant Valentine and plaintiff's adjacent and nearby lots will be, and have been, by reason of the construction of ten of the said inferior and cheap dwellings, lessened and diminished in marketability and value; that, instead of plaintiff having a second lien for its purchase money notes for said lots on said lots with buildings thereon costing \$5,000 each, and with \$1,000 invested in each of said houses by the defendant Hight as contracted by said defendant Hight as aforesaid, subject to a lien of but \$4,000, plaintiff will have a second lien on each of said lots to secure said purchase money notes with a house thereon cost-

ing but \$3,550, and subject to the prior \$4,000 building loan, and defendant Hight will have secured and appropriated to his own use the difference between the actual cost of each of said houses, and the said building loan of \$4,000 thereon, or approximately \$450 on each of said lots.

15. Plaintiff further shows to the Court that it first learned of the fraud committed and being committed by said Hight, upon it, in, to wit, March, 1916, and thereupon at once and has repeatedly since, requested of said defendant Hight that he give plaintiff information

13 as to the actual cost of each of said dwellings then constructed or being constructed by him upon the lots conveyed by plaintiff to said defendant Valentine, as aforesaid, showing the contract price of each house, and the amounts of money collected or received, or paid over from said building loan upon and in the construction of said houses but the said defendant Hight refused and declined to give to plaintiff or its representatives any information touching the same, or to even furnish the means of obtaining such information; that subsequently plaintiff made formal written request of said defendant Hight for such information and mailed the same by registered mail to said Hight, who thereafter admitted having received such request, that said defendant Hight has not furnished any requested information, although he has since had ample time in which to do so.

16. Plaintiff further shows to the Court that the dwellings being erected by the said defendant Hight on ten of the said lots, being lots numbered 69 to 78, inclusive, in said Square, are almost completed in their construction. Plaintiff avers on information and belief that the advances already made on account of the building loans on each of the said ten lots had been more than sufficient to erect and construct said dwellings complete, but nevertheless the defendant Hight expects to receive the remainder of the said building loan from the defendant Maryland Trust Company, through the defendant New Amsterdam Casualty Company, on April 29", 1916, unless restrained by an order of this Honorable Court and if the said defendant Hight is permitted to receive the balance of the said building loan, the exact amount of which balance is unknown to plaintiff, plaintiff avers that the said defendant Hight will not use the said balance of the said building loan for the improvement of the said premises, as he has received more than enough with which to complete the said dwellings, but will divert and appropriate the same to his own use.

17. Plaintiff further shows to the Court that the defendant Hight has just started the construction of two similar dwellings on said lots numbers 79 and 80, in said Square, and that these said dwellings, when completed, according to the aforesaid blue prints and specifications, will cost not more than \$3,550 each, and if said defendant Hight is permitted to construct such dwellings on said two lots as he has informed plaintiff it is his purpose to do, he will thereby commit further fraud on plaintiff, and will corruptly reap further profit and benefit to himself and further cheapen and diminish in

value the said two lots and plaintiff's other nearby and adjacent properties in their marketability and value.

18. Plaintiff further shows to the Court that a contract exists between defendant Maryland Title Company and defendant Harry E. Karr by which the said building loan is actually being paid and advanced to the said defendant Hight by the defendant Maryland Title Company, through the defendant New Amsterdam Casualty Company, and the representative of said last mentioned company in the District of Columbia; that in order to secure the said building loan with which to construct said twelve houses the said defendant Hight entered into an agreement with the said defendant Harry E. Karr, whereby the said defendant Karr was to and did apply to the Maryland Title Company of Baltimore, Maryland, for a building loan to be advanced on said property as the work on the said buildings progressed, which said building loan was to be secured by

15 the first deed of trust on said property described in paragraph 9 of this bill; that it was agreed between the said defendants

C. B. Hight, Harry E. Karr, and Charles A. Valentine, that the said defendant Valentine, "straw man," should execute his twelve one year promissory notes aggregating the sum of \$48,000 payable to the order of the said Karr, which the said defendant Karr was in turn to endorse over to said Maryland Title Company, which would discount the same and advance the cash therefor. Plaintiff further avers that the said defendant C. B. Hight could not have obtained a building loan of as much as \$4,000 on the improvements to be erected according to the plans and specifications on each of said lots, without pledging the credit of the said defendant Harry E. Karr, who is financially responsible. Plaintiff further avers upon information and belief that the said Maryland Title Company in advancing said building loan did not consider the value of the proposed houses to be erected upon the said lots but advanced the said money on the personal credit of the said defendant Harry E. Karr, and the value of the houses to be erected upon the said lots was not considered to any material extent by the said Title Company. The said Maryland Title Company, however, required of the said defendants Hight and Karr before it would discount said notes and advance said \$48,000 building loan, that the said dwellings when completed should be free of all mechanics liens thereon, and demanded of the said two defendants that they be protected by the bond of a surety company conditioned upon the completion of the said dwellings free of all such liens. The said defendant, New Amsterdam Casualty Company, agreed to write such a bond conditioned upon the completion of the said houses free of all such liens, provided the said \$48,000 to be paid by the defendant Maryland Title Company when discounting said notes of the defendant Valentine

16 payable to the order of said defendant Karr, should be disbursed by it, and the whole amount of the said \$48,000 paid to it. The said defendant, The New Amsterdam Casualty

Company, in order that it might be assured that the whole of said building loan might be available for the bills of labor and material men in constructing said dwellings. And plaintiff shows to the

Court that the said New Amsterdam Casualty Company is the party which has in hand the remainder of the said building loan which has not been heretofore advanced to or received by said Hight, and that it now has in its hands and possession a sum of money, the exact amount of which is unknown to plaintiff, being part of the said building loan of \$48,000 all of which should have gone into the erection of the said houses, which plaintiff avers, is considerably in excess of the amount actually required to complete said houses.

19. That the said defendant Charles A. Valentine, the "straw man" to whom plaintiff deeded its said lots under its agreement with said defendant Hight is insolvent, or possesses no means or financial ability to pay the purchase money notes secured by second deed of trust lien as aforesaid, to plaintiff; that plaintiff is the owner and holder of said notes aggregating \$20,842.50; that their value and collectibility is wholly dependent upon the security afforded by the second deed of trust liens aforesaid; that the said Valentine is but the agent, medium, or "straw man" of the said Hight for the purpose of executing building loan first lien deed of trust and obligations therefor and the purchase money promissory notes and the second deed of trust lien securing the same and has no equity in or right to said lots; that indeed, and as part of the understanding between said defendant Valentine and said defendant Hight, the said

17 defendant Hight caused the said defendant Valentine and his wife Carrie E. Valentine at the same time as the execution of the aforesaid deed of trust on said lots to convey all their right, title and interest in said lots unto him said defendant Hight and this is the conveyance described in paragraph 11 of this bill.

20. Plaintiff further states that the ten houses built on said lots by defendant Hight and the two houses being built thereon by him will be offered for sale by him at the price of \$7,000 or less each including the lot, but that he will be unable to sell them at a greater price than \$5,000 each. The said houses should be of a kind which, if the said defendant Hight had carried out his contract with plaintiff, would sell, including the lot, at the price of \$9,000 each.

21. Plaintiff further shows to the Court that the defendant Hight has announced his purpose of renting the said twelve houses as soon as they are completed, and has already placed them in the hands of a firm of real estate agents for that purpose.

22. Plaintiff further states that if the defendant Hight is permitted to carry out his scheme hereinbefore set forth, the same will result in a loss to it of the entire purchase price of said lots, that is to say, about \$18,000, and that it would be unable to collect or realize on any judgment that it might obtain against said defendant Hight in an action at law for breach of his contract to erect houses costing not less than \$5,000 each on said lots, and that from the best information it can obtain, it believes, and charges, that the said defendant Hight is insolvent and unable to pay plaintiff's claim against him, or any part thereof.

18 23. Plaintiff is advised that a Court of Equity, regarding as done that which is contracted to be done, will treat the balance of said loan of \$48,000 not yet paid over to said defendant Hight, as money of the said defendant Hight in the hands

of the defendant Maryland Title Company, or in the hands of the defendant New Amsterdam Casualty Company, and will, for the purpose of preventing consummation of a fraud upon plaintiff, impress a trust upon said balance, in favor of plaintiff, and direct the application of the same in such manner as to protect plaintiff against any loss by reason of the fraudulent acts of the said defendant Hight, as hereinbefore set forth.

24. That plaintiff is ready and willing and hereby offers upon the payment of the aggregate sums thereof as hereinafter prayed for, to transfer and assign (but without recourse on plaintiff) to the said Hight or his order, the aforesaid Valentine purchase money second lien and a deed of trust securing the same.

Wherefore, the premises considered, plaintiff prays as follows:

1. That the writ of subpœna may be issued to the defendant named in the caption hereof, and that the defendants, C. B. Hight, Charles A. Valentine, Harry E. Karr, Maryland Title Company, and the New Amsterdam Casualty Company and each of them be required to appear herein and answer the exigencies of this bill, but answer under oath is hereby expressly waived as to each of them.

2. That the defendant, C. B. Hight, be enjoined and restrained pendente lite and permanently from receiving from the defendants Harry E. Karr, Maryland Title Company, and New Amsterdam Casualty Company, their agents, servants, and representatives, and the said defendants Harry E. Karr, Maryland Title company, and

19 New Amsterdam Casualty Company, their agents, servants and representatives, be likewise enjoined and restrained pendente lite and permanently from paying to the said defendant C. B. Hight the balance of the said loan of \$48,000 remaining in their hands; and that the balance of said loan be paid into the hands of a receiver to be appointed herein, and be applied under the direction of this Court in such manner as to protect the plaintiff, as far as possible, against loss from the fraudulent notes of the defendant Hight in the premises.

3. That the said defendant C. B. Hight be enjoined pendente lite and permanently from prosecuting the construction of the said two houses on lots 79 and 80 in square 2063.

4. That the said defendant C. B. Hight be required in this proceeding to give and discover full and complete information as to the cost of the said several dwellings.

5. That all necessary and proper accounts be ordered and taken under the direction of this Honorable Court.

6. That defendant Hight be restrained and enjoined from renting out the twelve houses herein before mentioned.

7. That a personal decree be entered herein against the defendant C. B. Hight in favor of the plaintiff for such damages as the plaintiff has or may sustained by reason of the premises.

8. And that plaintiff may have such other and further relief as to the Court may seem meet and proper.

[SEAL.]

RICHMOND PARK IMPROVEMENT
COMPANY, INC.,

By S. G. HAMNER, *President.*

DISTRICT OF COLUMBIA, ss:

S. G. Hamner being first duly sworn deposes and says that he has read the foregoing bill of complaint by him subscribed as President of the plaintiff corporation and that he is duly authorized to
20 execute the same; that he knows the contents thereof and that the matters and things therein stated as of personal knowledge are true, and those stated upon information and belief he believes to be true.

S. G. HAMNER.

Subscribed and sworn to before me this 27th day of April, A. D. 1916.

[SEAL.]

RALPH S. SHERLINE,
Notary Public, D. C.

My commission expires January 4, 1920.

FRED B. RHODES,
PAUL B. CROMELIN,
Attorneys for Plaintiff.

PLAINTIFF'S EXHIBIT A.

For and in Consideration of \$10.00 to it in hand paid by C. B. Hight, receipt of which is hereby acknowledged, the Richmond Park Improvement Co. Inc. has sold, given and granted, and does by these presents sell, give and grant to said C. B. Hight or his assigns the right at any time within thirty (30) days from the date hereof to purchase the following lots in the subdivision known as Richmond Park, viz: Lots numbered forty-five (45) to sixty two (62) both inclusive in Square numbered Two Thousand sixty-three (2063). The said lots numbered forty-five to fifty inclusive to be resubdivided by said Richmond Park Improvement Co. Inc. into four lots of equal frontage of forty-six feet three inches, and said lots 51 to 62 inclusive to be resubdivided by the said Richmond Park Improvement Co. Inc. into eight lots, the two end lots each abutting on a 10 foot alley to have an equal width each of thirty-five feet, and the remaining six inside lots to have an equal width
21 each of forty feet. This resubdivision to be made and spread on the records of the Surveyor for the District of Columbia at once.

Said lots to be delivered to the said C. B. Hight or his assigns free of encumbrance. Taxes adjusted to date of delivery. Gutters, sidewalks, macadam roadway from Porter Street north on 35th Street to Rodman Street to be furnished as soon as practicable by the said Richmond Park Improvement Co. Inc., also gutters on Rodman Street on the side next to the lots above mentioned, and macadam 12 to 15 feet in width in Rodman Street from 35th Street to the east-most 10' alley above referred to. The rough stone for the macadam

both on 35th Street and on Rodman Street to be put on as soon as practicable, and the finishing stone when the houses are completed. Water and sewer for the above referred to lots to be immediately applied for to serve lots 45 to 50 inclusive at the expense of the said C. B. Hight and to serve lots 51 to 62 both inclusive at the expense of the said Richmond Park Improvement Co. Inc.

The said C. B. Hight is to have the right to place on each lot or lots a building loan to be secured by a first deed of trust on said property in amount not to exceed four-fifths of the cost of the contemplated improvements. The plans and specifications of said improvements to be satisfactory to the said Richmond Park Improvement Co., Inc. or its duly authorized representative.

Said lots to be paid for by said C. B. Hight at the rate of thirty-five cents per square foot. Payment to be made in the promissory notes of a so called "straw man" to the order of said Richmond Park Improvement Co. Inc. at two years, six per cent interest from

22 date; the said notes to be secured by second deeds of trust on said lots, *subsequent* only to said building loans. It is distinctly understood that there is no personal obligation on the part of the said C. B. Hight for the payment of said notes secured by second deeds of trust.

As the houses are completed and sold the above mentioned second trusts given for purchase money on the lots are to be exchanged with said C. B. Hight for whatever the cash payment amounts to over one thousand dollars (\$1,000.00) in cash, and the balance in the alternate first, third, fifth, seventh, etc. monthly notes of the purchaser likewise secured by second deed of trust on said lots, *subsequently* only to said building loan. Should the cash payment be \$1,000.00 or less, then no cash is to pass for the release of the above mentioned second trusts, and same to be exchanged for equal amount of buyers' alternate notes as described above.

In Testimony Whereof the said Richmond Park Improvement Co. Inc. has caused this option to be executed this 13th day of October, 1915, by the signature of its president and attested by its secretary and bearing the corporate seal of said company hereto attached.

RICHMOND PARK IMPROVEMENT
CO., INC.

By S. G. HAMNER, *Pres.*

[CORPORATE SEAL.]

H. E. DE WITT, *Sec'y.*

Approved.

C. B. HIGHT.

PLAINTIFF'S EXHIBIT B.

WASHINGTON, D. C., November 8, 1915.

Richmond Park Improvement Company, Incorporated, c/o S. G. Hamner, President, Peoples Bank Bldg., Lynchburg, Va.

GENTLEMEN: I am enclosing you herewith deed to the lots 45 to 69 Square 2063 now known as lots 69 to 80 from your Company to Charles A. Valentine as it seems that everything is ready for this deal to go through on Wednesday.

Kindly execute this deed and return it to the District Title Insurance Company, Washington, D. C., with instructions to them to record same when they have in hand two deeds of trust on the same property. The first deed of trust to cover building money in the amount of Four Thousand Dollars (\$4000.00) each on twelve houses. The second deed of trust in your favor to cover purchase price of the lots at thirty-five cents per square foot. The cost of the improvements as contemplated and covered by blue prints and specifications will be over Five Thousand Dollars (\$5000.00) per house.

I suppose the current taxes are paid on this property. If not, will you kindly see that payment is made at once.

What can you tell me in regard to the macademizing of the streets?

In regard to the small part of these lots on which there seems to be a slight cloud in the title I have just been notified officially by the loan people, this is after having had a talk to-day with your Mr. Oehmann, that they will accept the deed of trust just the way the matter stands, but that they will not advance any money to me until the title is made perfect. Kindly advise me immediately just how long this will take and as to whether you would be willing to guarantee that the title will be made perfect in a certain time, as I could not afford to build the two houses affected by this cloud unless I was sure that same would be fixed at a certain time.

Very truly yours,
(Signed)

C. B. HIGHT.

PLAINTIFF'S EXHIBIT C.

WASHINGTON, D. C., November 15, 1915.

Richmond Park Improvement Company, Incorporated, c/o S. G. Hamner, President, People's Bank Bldg., Lynchburg, Va.

GENTLEMEN: At the suggestion of your attorney, Mr. Kemp, I beg to herewith advise you that as part of my contract with you I will build or have built on the twelve lots numbered 69 to 80 in Square 2063, twelve detached dwellings after plans and specifications already submitted and approved by you, namely, four each of the three types A-B & C, and to cost not less than \$5,000.00 each.

These twelve dwellings I guarantee will be completed on or be-

fore six months from this date. Of course, however, as to the two proposed dwellings on lots 79 and 80 they will be finished within six months from the date of your clearing the title.

The buildings when completed will be free and clear of all claims or demands under the law commonly called the Mechanic's Lien Law.

Very truly yours,
(Signed)

C. B. HIGHT.

25

PLAINTIFF'S EXHIBIT D.

November 19th, 1915.

Messrs. C. B. Hight & Company, Colorado Building, Washington,
D. C.

GENTLEMEN: I have your favor of the 18th instant enclosing me a copy of the specifications for the new houses at 35th & Rodman Streets. We will leave the matter of the specifications to you as we are very much pleased with the houses you have already built and we have no doubt that we will be equally pleased with those you are now about to build. If the plans and specifications are satisfactory to you, and the houses will cost at least \$5000.00 each they will be satisfactory to us.

In regard to the macadam, we will send a representative to Washington in the next few days or two to make the contract for putting in the rough stone.

Yours very truly,

S. G. HAMNER.

S. G. H./M.
Copy.

Restraining Order.

Filed April 28, 1916.

* * * * *

Upon consideration of the petition of Richmond Park Improvement Company, Incorporated, in this cause filed, it is by the Court this 28th day of April, A. D. 1916,

Adjudged, Ordered and Decreed that the defendant, C. B. Hight, be, and he hereby is enjoined and restrained until a further hearing by the Court in the premises, which is hereby fixed for the 5th day of May, 1916 from proceeding with the construction of two dwellings on lots 79 and 80, in square 2063, Richmond Park, within the

26 District of Columbia, and that he is further hereby enjoined and restrained, until further order of the Court in the premises, from receiving from the Maryland Title Company, the New Amsterdam Casualty Company, and Charles A. Valentine, or of any one of them, the balance of the building fund in the hands of the said defendants, or any one of them, for the construction of dwellings on lots 69 to 80, inclusive, in said Square.

And it is further adjudged, ordered and decreed that the said defendants, the Maryland Title Company, the New Amsterdam Casualty Company, and Harry E. Karr, be, and they are, and each of them hereby is, enjoined and restrained, until further order of the Court as above set forth in the premises from paying to the said defendant, C. B. Hight, or the defendant Charles A. Valentine, the balance of said building loan for the construction of said houses on said lots 69 to 80, inclusive, in said Square, or any portion thereof.

THOS. H. ANDERSON, *Justice*.

Motion of C. B. Hight to Dismiss Bill.

Filed May 5, 1916.

* * * * *

Now comes the defendant C. B. Hight and moves the Court to dismiss the Bill in the above entitled cause for the following reasons:

1. Because the same fails to set forth facts sufficient to constitute a cause of action.

2. Because it is apparent upon the face of the Bill that the said option contract referred to in Paragraph 4 of the Bill and identified in said paragraph as "Plaintiff's Exhibit A" and the said alleged contracts and agreements set forth and referred to in Paragraphs 5, 6, 7, 8, 13, 14, 20, 22, and 23 of the Bill were and are at all times beyond the power of the plaintiff corporation to make, are ultra vires, against public policy, void and unenforceable.

3. Because it is apparent upon the face of the Bill that the alleged contracts and agreements described therein between the plaintiff and the defendant, C. B. Hight are and were at all times beyond the power of the plaintiff corporation to make, are ultra vires, unlawful, against public policy, void and unenforceable.

4. Because it is apparent upon the face of the Bill that the plaintiff, if entitled to any remedy against the defendant, or any of the defendants, has an adequate remedy at law.

5. Because the Bill fails to show any equities existing in the plaintiff.

6. Because said Bill is multifarious.

7. For other reasons apparent upon the face of the Bill.

DANIEL THEW WRIGHT,
T. MORRIS WAMPLER,

Att'ys for C. B. HIGHT.

Opinion.

Filed May 11, 1916.

* * * * *

The bill in this case is brought by the Richmond Park Improvement Company, a Virginia corporation, against C. B. Hight and

others, and seeks injunction and other incidental relief. According to the averments of the bill, the plaintiff corporation, being the owner, in November 1915, of certain lots in the District of Columbia, conveyed the same to defendant Valentine pursuant to written agreement with defendant Hight whereby Hight agreed to pay for said lots at the rate of 35c per square foot to be secured by second trust, subject to first trust securing building loan not to exceed four-fifths of cost of contemplated improvements, and the improvements, on each lot "to cost not less than \$5,000 each." The bill further avers that defendant Hight is, in violation of said written agreement, placing improvements upon said lots costing less than \$4,000 each, although a first trust of \$4,000 (more than five-fifths of the cost of the improvements) is placed upon each lot, thereby depriving the plaintiff of the agreed margin for the protection of the purchase consideration due to it, and also injuring other lots in the vicinity belonging to plaintiff by reason of the lower class of improvements being built by defendant Hight. The defendants other than Hight and Valentine are made parties in order to effectuate the desired injunctive relief by preventing the loss of the unpaid balance, arising under the aforesaid first trusts, which, if applied in the manner planned by defendant Hight, will, it is alleged, operate to defraud the plaintiff.

Defendants Hight and The New Amsterdam Casualty Company have filed motions to dismiss, and in support of such motions contend that the contract constituting the basis of the suit is ultra vires and void, for the reason that §605 D. C. Code, which provides for the organization of business corporations, expressly provides:

"Provided, that nothing herein contained shall be held to authorize the organization of corporations to buy, sell, or deal in real estate, except corporations to transact the business ordinarily carried on by real estate agents or brokers."

29 In *Groo v. Norman & Robinson*, 42 App. D. C. 387, the Court of Appeals construed this provision, and held that, while its purpose is that "no domestic corporation is authorized to hold real estate except as an incident to its business" and that "a foreign corporation will not be accorded greater rights than are enjoyed by domestic corporations," a conveyance to a corporation for an unauthorized purpose is only voidable, and not void, and can only be avoided at the instance of the sovereign alone, and that in the meantime the corporation may "convey an indefeasible title to another."

It, therefore, follows, first, that the plaintiff corporation had title to the lots which it conveyed under its agreement with defendant Hight, and, second, that the conveyance operated to pass a good title.

This is not a suit to aid the plaintiff corporation in acquiring lands in excess of its powers, which, of course, the Court would not do. *Case v. Kelly*, 133 U. S. 21. *Groo v. Norman & Robinson*, 42 App. D. C. at p. 391. It is, on the contrary, a suit to protect the corporation against being defrauded (if the averments of the bill be accepted as true, which they must be for the purpose of these

motions), that is to say, from being defrauded out of the value of the lots which have been conveyed. There is, obviously, no public policy precluding relief of this character being accorded to plaintiff. It is analogous to the right of a corporation to maintain trespass against an intruder, notwithstanding the land trespassed upon may be held in excess of the corporate powers (§168 Elliott on Private Corporations, and cases cited.) In the present situation, however, there is no action at law which would be adequate, and consequently there is a remedy in equity.

30 The Court does not make any holding at this time as to the extent of the relief to which the plaintiff may be entitled under his bill. It merely holds that the bill states a case for some equitable relief, and, therefore, the motions to dismiss are severally overruled.

THOS. H. ANDERSON, *Justice*.

Order Overruling Motions to Dismiss Bill.

Filed July 8, 1916.

* * * * *

Upon consideration of the Motions to Dismiss the Original Bill of Complaint, filed, respectively, by defendant C. B. Hight, and defendant New Amsterdam Casualty Company, and the same being argued by counsel for the respective parties, and considered by the Court, it is by the Court this 5th day of July, 1916, adjudged, ordered and decreed that said Motions to Dismiss, and each of them, be and are hereby overruled nunc pro tunc as of the 11th day of May, 1916, to which overruling of said motion defendant Hight excepts.

THOS. H. ANDERSON, *Justice*.

Order Allowing Special Appeal.

Filed October 9, 1916.

Court of Appeals of the District of Columbia, October Term, 1916.

No. 463, Original Docket.

Equity. No. 34,297.

C. B. HAIGHT, Petitioner,

vs.

RICHMOND PARK IMPROVEMENT COMPANY, a Corporation.

31 On consideration of petition for the allowance of a Special Appeal in the above entitled cause, it is by the Court this day ordered that said petition be and the same is hereby allowed:

Per MR. CHIEF JUSTICE SHEPARD,
October 7, 1916.

A true Copy.

Test:

[SEAL.]

HENRY W. HODGES,
*Clerk of the Court of Appeals of the
District of Columbia.*

Assignments of Error.

Filed October 10, 1916.

* * * * *

Now comes the defendant, C. B. Hight and makes the following assignments of error:

1. The Court erred in granting the preliminary injunction ordered and issued upon the 28th day of April, A. D. 1916, as appears from the order of the Court entered on that day.
2. The Court erred in overruling the motion of the defendant, C. B. Hight, herein filed on the 5th day of May, 1916, to dismiss the Bill herein.
3. The Court erred in refusing to dismiss the Bill herein.
4. The Court erred in not dismissing the Bill herein.
5. The Court erred in not dissolving the restraining order herein issued on April 28, 1916.

DANIEL THEW WRIGHT,
T. MORRIS WAMPLER,
Attorneys for C. B. Hight.

32

Designation of Record.

Filed October 10, 1916.

* * * * *

The Clerk will please prepare a Transcript of Record for appeal as follows:

Transcript of,

1. Bill and attached exhibits.
2. Restraining order issued April 28, 1916.
3. Motion of C. B. Hight filed May 5, 1916, to dismiss the Bill.
4. Order of July 5, 1916, overruling Motion to Dismiss the Bill.
5. This Order.

DANIEL THEW WRIGHT,
T. MORRIS WAMPLER,
Attorneys for Defendant.

Copy received October 9th, 1916.

DANIEL W. O'DONOGHUE,
Attorneys for Richmond Park Improvement Company.

33 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered 1 to 32, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 34297 in Equity, wherein Richmond Park Improvement Company, Incorporated, is Plaintiff and C. B. Hight et als. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 16th day of October, 1916.

[Seal of the Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*,
By ALF. G. BUHRMAN,
Assistant Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 3028. C. B. Hight, appellant, vs. Richmond Park Improvement Company, Incorporated, Court of Appeals, District of Columbia. Filed Oct. 18, 1916. Henry W. Hodges, clerk.

